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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,648	03/20/2002	Shinichi Takeshima	112342	2766

7590

06/20/2005

Oliff & Berridge  
PO Box 19928  
Alexandria, VA 22320

EXAMINER
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JOHNSON, CHRISTINA ANN

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/088,648	Applicant(s) TAKESHIMA ET AL.	
	Examiner Christina Johnson	Art Unit 1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,8,15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/31/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 31, 2005 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 852 966.

EP 0 852 966 discloses a catalyst composition useful in the purification of exhaust gas. The catalyst composition comprises a first powder comprising porous particles supporting rhodium and a second powder comprising porous particles supporting platinum (page 3, lines 5-10 and page 8, lines 25-30). Examples of the

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porous particles include alumina, silica, titania, zirconia, silica-alumina, and zeolite (page 8, 1-5). The reference specifically teaches a composition comprising a first powder containing rhodium, barium, and zirconia and a second powder comprising platinum, barium, titania, and alumina (Example 22). It is taught that the powders may be loaded on a monolithic structure, which is considered to meet the particulate matter filter required.

With respect to the language of the claims, the first powder is considered to correspond to the NO<sub>2</sub> decomposition catalyst and the second powder is considered to correspond to the NO oxidation catalyst.

The recitations "decomposition catalyst" and "oxidation catalyst" are noted by the examiner. These recitations are regarded by the examiner as statements of intended use. While intended use recitations cannot entirely be disregarded, in composition and article claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. In re Casey, 370 USPQ 236 and In re Otto, 312 USPQ 458. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims.

The difference between the reference and the claims is that the reference does not specifically disclose an embodiment wherein the second powder includes silica or silica- alumina. However, the reference does disclose that suitable particles for the first and second powders include silica, titania, alumina, and silica-alumina (page 8, lines 1-5).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the specific examples provided to include the use of silica or silica-alumina in place of the titania-alumina support shown in Example 22, in light of the teaching by the reference that such particles are functionally equivalent. One of ordinary skill would be motivated to substitute known functionally equivalent supporting particles in the second powder, with a reasonable expectation of success.

#### ***Allowable Subject Matter***

4. Claims 15-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-2 and 7-8 have been considered but are moot in view of the new ground(s) of rejection.

Specifically, applicant argued that the deletion of rhodium from the NO oxidation catalyst would overcome the EP reference. However, given the claim amendments, it is the position of the examiner that the first powder would correspond to the NO<sub>2</sub> decomposition catalyst and the second powder would correspond to the NO oxidation catalyst. Therefore, the invention is obviated by the EP reference.


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**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Johnson whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christina Johnson  
Patent Examiner  
Art Unit 1725  
6/15/05

CAJ  
June 15, 2005